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IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

JOHN K. YEE and IRENE YEE, *et al.*,
Petitioners,

v.

THE CITY OF ESCONDIDO,
Respondent.

On Writ of Certiorari to the Fourth Appellate District, Division One, Court of Appeal for the State of California

BRIEF OF GOLDEN STATE MOBILHOME OWNERS LEAGUE, INC., NATIONAL FOUNDATION OF MANUFACTURED HOMEOWNERS, AND DESIGNATED MOBILEHOME OWNERS ASSOCIATIONS AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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AMICI CURIAE
MOBILEHOME OWNERS ASSOCIATIONS

Golden State Mobilhome Owners League, Inc.

Idaho Manufactured Home Owners Federation, Inc.

Mobile/Manufactured Home Owners & Tenants Association of New Hampshire

Mobile Home Federation of Massachusetts

Mobile Home Owners Association of Illinois, Inc.

Mobile Home Owners Association of New Jersey, Inc.

Mobilehome Owners League of the Silver State, Inc.

Mobile Home Owners of America, State of Washington

National Foundation of Manufactured Homeowners

New England Council of Manufactured Housing Residents

Park Resident Home Owners Association, Inc., a New York State Organization

Pennsylvania Manufactured Home Owners of America, Inc.

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Amici Curiae submit this brief with the written consent of all parties filed with the Clerk of the Court.

INTEREST OF AMICI CURIAE

Amici curiae are eleven state mobilehome owner associations and the national organization of mobilehome owners. The membership of each association is substantial. The Golden State Mobilhome Owners League, Inc., for example, is a nonprofit California corporation of some 200,000 persons living in nearly 100,000 mobilehomes throughout California. Amici's members live in mobilehome parks and pay monthly rent to the park owner for the space on which their home resides.

Amici curiae have a substantial interest in the continuing ability of local governments to enact ordinances that

protect their property interest in their home. A large percentage of amici's homeowner members are retired Americans on fixed incomes or low and moderate income families for whom the mobilehome is the only feasible means of home ownership. The members of the amici organizations have made a substantial investment in their homes and in improvements to the space on which their homes are located. This investment can be rendered worthless if petitioners' effort to invalidate Escondido's Rent Protection Ordinance is successful.

SUMMARY OF ARGUMENT

Petitioners' challenge to Escondido's Rent Protection Ordinance ("Ordinance") implicates far more than a single municipality's effort to control rents in mobilehome parks: it challenges the entire body of California State law that has developed in response to the economic and technological innovation of the mobilehome.

The modern factory-built home that can be transported to a small site and permanently installed, without all the infrastructure of a conventional single family home, is a technological and economic breakthrough in the provision of affordable owner-occupied housing. "[T]he mobile home must be regarded as a genuine innovation, meeting needs which conventional housing has left unsatisfied." [1] Indeed, it has been called a "Revolution in American Housing"; [2] mobilehomes are the only kind of housing that many moderate-income American families can reasonably afford.[3]

There is no traditional property rule to govern the "genuine innovation" of the modern mobilehome. Unlike a conventional tenant's fixtures or a commercial tenant's improvements, it is a distinctively American innovation linked to the American dream of home ownership. In actual operation, the economics of this new type of housing required a legally innovative split estate where one party owned the dwelling and another owned the underlying land. This form of property ownership gave park owners considerable economic power over mobilehome owners and posed questions that had not previously presented themselves in the setting of modern home ownership.

The novelty of such separate ownership required the state to exercise its authority to define the respective rights of the co-proprietors. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972); *Munn v. Illinois*, 94 U.S. 113, 134 (1877). That is exactly what the State of California ("State") did over a period of several decades by enacting numerous laws to protect mobilehome owners' equity investment in their homes.[4] Those laws, which define the property rights of park owners and homeowners in mobilehome parks, recognize the homeowners' entitlement to a property interest that reflects the price the home would sell for, with security of tenure in its location.

In turn, the State found that the park owners' economic power to deprive homeowners of their equity in their homes resulted from the limited supply of mobilehome spaces and the homeowners' "sunk" investment on-site, and was not a protectable property interest. The State's definition of the respective property rights of the mobilehome owners and park owners was well within its authority to define property rights in a new situation so long as it did not unreasonably impair the park owner's use of its property. *PruneYard Shopping Center v. Robins*, 447 U.S. 73, 83 (1980). Escondido's Ordinance, like that in jurisdictions throughout California and the United States, implements these state laws in a form that they explicitly authorize.[5]

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[1] Wallis, *Wheel Estate* (1991) at 20.

[2] Drury, *Mobile Homes, The Unrecognized Revolution in American Housing* (1972).

[3] Wallis, *supra* note 1 at 14.

[4] California law governing mobilehomes is codified in California Civil Code section 798 et seq. (West 1983 and Supp. 1991).

[5] Cal. Civ. Code section 798.17(a) allows a mobilehome owner to demand a rent-controlled tenure of twelve months or less whenever a local government adopts an ordinance or initiative measure estab-

Petitioners claim that the Escondido law results in a physical taking of their property because it transfers a possessory interest of the park owner (the right to occupy the property in its park at below market rates) to the homeowner and it allows the homeowner to market this interest. Specifically, petitioners challenge the provisions of the Escondido Ordinance that preclude park owners from automatically raising rents whenever a mobilehome is sold in place. Petitioners also allege this provision violates their right to substantive due process because it is not rationally related to a legitimate government interest.

Properly framed, this is a definition of property case, not a taking case. The appropriate starting point for resolving this property dispute is to ask whether California, when faced with this new form of property ownership, had the authority to protect the equity investment of mobilehome owners by allowing them to sell their home with security of tenure in its location. The second issue that this Court must address then, is whether Escondido's Ordinance is consistent with the State's definition of those property rights. Amici respectfully submit that the Court should answer both questions in the affirmative and uphold the constitutionality of the Escondido Ordinance.

ARGUMENT

I. THE TECHNOLOGICAL INNOVATION OF THE MOBILEHOME REQUIRED THE STATE OF CALIFORNIA TO DEFINE THE RESPECTIVE RIGHTS OF THE PARK OWNER AND THE MOBILEHOME OWNER AS CO-PROPRIETORS IN THIS UNIQUE FORM OF HOME OWNERSHIP.

A. California Has the Authority To Define the Mobilehome Owners' Estate in Their Homes.

New forms of ownership, new technologies, and new economic and material conditions in a state generate changes in the rules of real property law. The principle

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lishing a maximum amount that a park owner may charge a mobilehome owner for rent.

is as old as the Union; in the Eighteenth Century "some of our states quickly took advantage of their newly acquired independence to abolish all feudal tenures by legislative fiat."[6] "In a changing world, it is impossible that it should be otherwise." *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387 (1926) (zoning not a violation of property rights).

States have power to enact laws that respond to technological and economic changes. *Munn v. Illinois*, 94 U.S. at 134. "Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law . . . ." *Board of Regents of State Colleges v. Roth*, 408 U.S. at 577. The State is not compelled to leave the parties to whatever physical or economic power one has over the other, or to leave them to whatever they can obtain by contract. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 392 (1937).

The state's power to define property interests is not unlimited. It may not "unreasonably impair" an owner's use of his property, *PruneYard Shopping Center v. Robins*, 447 U.S. at 83, intrude on the "sphere of private autonomy," *id.* at 93 (concurring opinion), or simply abrogate common law remedies. *Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 88 (1978). Nor may the state simply transform private property into public property. *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980) (declaring invalid the transfer of interest on private interpleader funds to public accounts). So long as it respects these precepts and does not, in the absence of changed circumstances, reverse a "usual and general rule" of property, the state is and must be free to adapt to new circumstances.

There are numerous examples throughout our history of legislative and judicial responses to technological and economic innovations. Thus, the invention of the airplane

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[6] Vance, "The Quest for Tenure in the United States," 33 *Yale L.J.* 248, 249 (1924).

led to a change in the common law definition of property through recognition of navigable airspace. *United States v. Causby*, 328 U.S. 256, 260-61 (1946). Modern timber harvesting diminished riparian rights and created a public right of passage by developing the floating log test of navigability in place of the common law rule that only ship traffic demonstrated navigability. *Lancy v. Clifford*, 54 Me. 487, 491 (1867). The modern company town and the contemporary shopping center brought modifications in the law of trespass. *Marsh v. Alabama*, 326 U.S. 501 (1946) (access to company town); *State v. Shack*, 58 N.J. 297, 277 A.2d 369 (1971) (access to migratory farm workers on employer's land); *PruneYard Shopping Center v. Robins*, 447 U.S. at 82 (political soliciting in shopping center).

The new and unique form of property ownership created by the modern mobilehome presented the State of California and its local governments with a circumstance they had never before encountered. The economic necessities of low cost homeownership required that a mobilehome be sited on land owned by another, where it did not have security of tenure. Park owners, because of this split estate, the limited supply of mobilehome spaces, and the homeowners' "sunk" investment on-site, obtained a controlling economic power over the equity of mobilehome owners in their home.

The property interest that petitioners claim was taken by the Escondido Ordinance is the product of the park owner's economic power over homeowners. That power grows out of immobility, not out of the natural force of supply and demand, and is thus a species of monopoly after the fact. The interest claimed by the park owners represents their power to deprive mobilehome owners of their equity investment in their homes; it is not a constitutionally protected property right. Since the beginning of the modern mobilehome era and the emergence of the split estate, California, like other states in this country where mobilehomes comprise a significant portion of the affordable housing stock, has determined that the right of sale with security of tenure in its location resides in the

homeowner.[7] Because the park owners never possessed the interest they now claim, the Escondido Ordinance has taken nothing from petitioners.

B. The State Has Responded to the Peculiarities of the Mobilehome Market by Allocating Important Property Rights to the Homeowners.

1. *Mobilehomes Are the Predominant Form of Unsubsidized Affordable Housing in the United States.*

Nothing illuminates the conflict in this case better than the phrase petitioners have chosen to describe the mobilehome: They call it "depreciable personal property." (Brief for Petitioners (hereinafter "Brief"), at 28.) For 12.5 million Americans, a mobilehome is their dwelling; for people of modest means, old and young, a mobilehome is the only home they can hope to own.[8] Manufactured housing accounted for almost 36 percent of all single-family homes sold in the United States in 1981, and for the vast majority of those sold for under $50,000.[9] Older Americans on fixed incomes and more than 80 percent of young households who do not own a home already can only afford to buy a mobilehome.[10]

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[7] *See infra* note 57, and accompanying text.

[8] A study by the California Department of Housing and Community Development ("HCD") estimates that families earning only 50 to 80 percent of the median income in their area could afford to buy a mobilehome. HCD, *Incentives for New Family Mobilehome Parks in California* (hereinafter "*Incentives*") (1986) at 6.

[9] Baar, "The Right to Sell the 'Im'mobile Manufactured Home in its Rent Controlled Space in the 'Im'mobile Home Park: Valid Regulation or Unconstitutional Taking?," 24 *Urban Lawyer* No. 2 (forthcoming Winter 1992), citing *Report of the President's Commission on Housing* (1982) at 85-86.

[10] Nutt-Powell, *Manufactured Homes* (1982) at 67. In Escondido, a mobilehome on-site costs about one-third to one-quarter of the price of a conventional site-built home. Compare sales data from Berlin Research Corporation, *Mobile Home Sales Report* (1991) to "Southland Home Prices for San Diego County," *Los Angeles Times* (November 17, 1991).

For young and old, home ownership with an equity interest is strongly desired. The rental apartment is not a satisfactory alternative because it meets none of the four basic norms of Americans' housing preferences: ownership, detached dwelling, private outdoor space, and conventional construction.[11] In contrast, the mobilehome meets three of those criteria. Not surprisingly, therefore, rental apartments and owner-occupied mobilehomes are distinct markets.

Contrary to petitioners' assertions, the modern mobilehome is not a depreciating asset. The average mobilehome, like the average site-built home, retains its value over decades. It is a dwelling that is maintained, improved, and cared for just like conventional site-built homes and that "appreciate[s] in value when properly located, maintained, and cared for."[12] The only difference is that the owners are on average less affluent, often because they are retired and living on pensions. The average age of mobilehome owners in Escondido is 64.4 years.[13] In 1988 the median family income of Escondido mobilehome owners was $15,500.[14]

Modern mobilehomes, many as large as 1400 square feet,[15] cost tens of thousands of dollars retail and home-

[11] Tremblay & Dillman, *Beyond the American Housing Dream: Accommodation to the 1980's* (1983) at 14.

[12] "Better Way to Appraise Mobile Homes," *Banking* (October 1978) at 118. Mobilehome prices appreciate in states even without rent control. HCD, *Manufactured Housing for Families: Innovative Land Use and Design* (hereinafter "*Manufactured Housing for Families*") (1986) at 13-15, showing rapid appreciation of mobilehome prices in Arizona even though the state preempts rent control; *see* Az. Stat. Ch. 11 § 33-1416 (West 1990).

[13] San Diego Association of Governments, *City of Escondido Mobile Home Needs Survey* (1988) at 5.

[14] *Id.* By comparison, the 1990 median income for all households in the San Diego area was $37,900. San Diego Association of Governments, *City of San Diego Mobile Home Needs Survey* (hereinafter "*San Diego Mobile Home Needs Survey*") (1990) at 9.

[15] Anderman, *The Manufactured Housing Alternative* (1981) at 13; *San Diego Mobile Home Needs Survey, supra* note 14 at 14.

owners invest thousands more in improvements and landscaping, as well as placement on their site. In 1988 the average retail cost of a double-wide mobilehome in California was $40,000.[16] Purchasers buy and move into well-maintained homes that are often well over twenty years old, going back to the beginning of the era of the modern, larger mobilehomes.[17]

The single example cited by Judge Kozinski in *Azul Pacifico, Inc. v. Los Angeles*, —— F.2d ——, —— (9th Cir. 1991), 91 Daily Journal D.A.R. 13599 (1991), and repeatedly cited by petitioners (Brief, at 10, 14, 20) of an individual who bought a mobilehome on-site and scrapped it, is a highly unusual situation. As with site-built homes, the overwhelming majority of mobilehomes are bought to be lived in, and the sellers have a substantial equity investment to protect. By isolating the extremely atypical case of "one Mrs. Morrison," the opinion in *Azul Pacifico* suggests that the home itself is worthless. Exactly the opposite is the case. Almost all mobilehomes are sold in place as sound dwellings to buyers who will live in them.[18]

2. *Mobilehome Owners Are Uniquely Vulnerable to Losing the Investment in Their Home.*

a. *The Mobilehome Owners' Substantial Investment in Their Homes and Scarcity of Alternative Locations Limit Their Options.*

Mobilehome owners are in a unique, and uniquely vulnerable, position. They cannot pack up and leave when rents rise. Their homes sit on land owned by someone else—a pervasive necessity of the economics of the mobilehome as affordable housing. Even if vacant spaces

[16] *Manufactured Housing for Families, supra* note 12 at 7-8. This amount does not include transportation and setting on site.

[17] Recent published sales figures for Escondido show many transfers of mobilehomes that were built in the early to mid-1960's, and many more that date to the early 1970's. Berlin Research Corporation, *supra* note 10.

[18] HCD, *Mobilehome Parks in California* (1986) at 19, stating that more than 90 percent of mobilehomes that are sold remain in the park.

were available (there are virtually none in much of California),[19] the cost of moving a sizeable mobilehome is between $10,000 and $12,000.[20] A mobilehome thus has considerably more value if it can remain on-site than if it must be moved elsewhere. This fact permits the "opportunistic behavior" that is created whenever one party is obliged by circumstances to make an immobile capital investment on the land of another.[21] This power may be called opportunistic monopoly, or monopoly after the fact. Once the mobilehome is installed on its pad, the unprotected homeowner will submit to above-market rents simply to avoid the cost of moving. The park owner's power to capture for himself those sunk investment costs is an undeserved windfall called "quasi rent." Even Hirsch & Hirsch speak of this monopoly profit potential as a "hold up" of the incumbent mobilehome owner.[22]

Scarcity increases the mobilehome owner's vulnerability. The virtual absence of vacant pads means the homeowner has nowhere to move. He is thus vulnerable not only to loss of moving costs, but to the entire equity in his home if he has no entitlement to security of tenure for himself or for a successor in his location. If there were no scarcity, the mobilehome owner could move and at least protect his investment, minus the cost of moving. But where there are no vacant sites available, scarcity permits a park owner to drive the home's price down to salvage, ordinarily only a few thousand dollars.[23] What

[19] Pad vacancies are about 3 percent statewide and near zero in many California communities. *Mobilehome Parks in California*, *supra* note 18 at 17.

[20] Wallis, *supra* note 1 at 15.

[21] O. Williamson, *Market and Hierarchies: Analysis and Anti-Trust Implications* (1975).

[22] Hirsch and Hirsch, "Legal-Economic Analysis of Rent Controls in a Mobile Home Context: Placement Values and Vacancy Decontrol," 35 *U.C.L.A. L. Rev.*, 389, 436 (1988).

[23] Note: "Mobile Home Parks and Connecticut's Regulatory Scheme; A Takings Analysis" (hereinafter "Mobile Home Parks and Connecticut's Regulatory Scheme"), 17 *Conn. L. Rev.* 811, 815, and n. 19 (1985).

usually is a source of appreciation becomes, for the mobilehome dweller, a trap.

b. *Rent Control Is a Response to Scarcity; It Is Not Responsible for Scarcity.*

Rent control did not create scarcity in the mobilehome market; it was a response to scarcity largely created by restrictive zoning and the landowner power it generated. "As urban areas grew, [cities] annexed the parks along with everything else. . . the only land zoned for [mobilehome parks] was often what they already occupied."[24] Although total exclusion is often barred by legislation and the courts, new laws permitting mobilehomes to be placed on land zoned for residential use produce virtually no results, as land prices are too high to make the use of such large tracts economical.[25]

Scarcity persists because other, higher density uses are more profitable than mobilehome parks, whether or not there is rent control.[26] For example, if controlled rents limit return to 8 percent, while uncontrolled rents would produce a 12 percent return, profit maximizing landowners will still reject mobilehome parks in favor of high rise apartments or office buildings which can produce a 15 percent return. Where land prices are high, mobilehomes are unlikely to be built.[27] For that reason, few new

[24] Wallis, *supra* note 1 at 16; *see also* "Manufactured Housing: The Invalidity of the 'Mobility' Standard," 19 *The Urban Lawyer* 367 (1987).

[25] HCD, *Local Government Mobilehome and Mobilehome Park Policies in California* (hereinafter "*Local Government Policies*") (1986) at 13; Comment: "California Government Code Section 65852.3: Legislature Prohibits Exclusion of Mobile Homes on Single-Family Lots," 16 *U.C.D.L. Rev.* 167 (1982).

[26] Rent control was cited in a survey of local governments in California as the reason for not submitting a mobilehome park development application in only one percent of the cases. Lack of suitable land, costs, economics, and poor demand were dominant considerations. *Local Government Policies*, *supra* note 25 at 31.

[27] "New parks must compete against higher intensity alternatives." *Incentives*, *supra* note 8 at 17. Where county land prices are high, the distribution of mobile home parks is low. State of

mobilehome parks are being built in Southern California and it is unlikely that new mobilehome parks will be built on any land in Escondido.[28] The decline in the number of new mobilehome parks in California over the last several decades is attributable fundamentally to increased demand for high density uses, not to rent control.

c. *In the Absence of Regulation, Park Owners Have Exercised Their Substantial Economic Power To Drive Mobilehome Prices Down, Leaving the Homeowner With a Worthless Investment.*

The history of park owner abuses of their economic power over mobilehome owners has been documented over the years.[29] For example, park owners charged entrance and exit fees, required homeowners to buy their homes from the parkowner or a specified dealer, and rejected new tenants without the payment of a fee.[30]

Park prohibitions of on-site sales allowed park owners to evict current howeowners and collect entrance fees from incoming homeowners—with disasterous consequences for the evicted homeowners.

> [T]he evicted homeowner must not only move himself but must also move his home. The owner, in effect,

New Jersey Legislative Study Commission, *Report and Recommendations of the Mobile Home Study Commission* (October 1980) at 93.

[28] Escondido already has 31 mobilehome parks, and while homeowners may place mobilehomes on individual lots, none of the vacant residential property is zoned for mobilehome parks.

[29] Manheim, "Tenant Eviction Protection and the Takings Clause," 1989 *Wisc. L. Rev.* 925, 965, n. 224; "Mobile Home Parks and Connecticut's Regulatory Scheme," *supra* note 23 at 815-816; *Ware v. Trailer Mart, Inc.*, 623 F. 2d 1150 (6th Cir. 1980) (requiring purchase of mobilehome from park owner is violation of Section 4 of the Clayton Act, 15 U.S.C. § 15); *Sherman v. Mertz*, 42 Cal. App. 3d 769 (1974) (kickbacks on profits from sale of mobilehomes a restraint of trade).

[30] "Tyranny in Mobile-home Land," *Consumer Reports* (July 1973) at 441. *See also Suburban Mobile Homes v. AMFAC Communities*, 101 Cal. App. 3d 532 (1980) (requirement that mobilehomes could only be purchased from specified dealers violated California's anti-trust laws).

> faces the options of abandoning the home, attempting to sell it, or moving it into storage until a new pad is obtained. All of these options may destroy the homeowner's equity in his unit . . . [T]he mobilehome park owner may have strong incentives to evict his tenants whenever possible.[31]

Exemptions from this prohibition could be purchased, with prices—even in 1973—varying between $250 and $2,700.[32]

The legislative staff analysis for the 1973 California bill that prohibited forced removal of mobilehomes upon sale noted:

> it is alleged that the management often obtains a very large commission for directing purchasers to the tenant, which the tenant must pay if he wants the new purchaser to be able to move into the park.[33]

These abuses allowed park owners to monetize their power over homeowners.

II. STATE LAW PROTECTS THE PROPERTY INTERESTS OF MOBILEHOME OWNERS FROM SIGNIFICANT DIMINUTION BY PARK OWNERS.

A. The Mobilehome Owner as Co-Proprietor, Not Ordinary Tenant.

For more than twenty years the State of California has been legislating to "protect the investment of mobilehome owners" against abuses of economic power by park owners.[34] Owners of mobilehomes, as co-proprietors with

[31] Vernon, Note: "Mobilehomes: Present Regulation and Needed Reforms," 27 *Stanford L.Rev.* 159, 167 (1974).

[32] Tyranny In Mobile-home Land," *supra* note 30 at 441.

[33] Senate Local Government Committee, *Staff Analysis*, Assembly Bill 702, Wilson (amended August 14, 1973).

[34] Press Release dated May 17, 1973 by Assemblyman Bob Wilson, sponsor of the original law now codified at Cal. Civ. Code § 798.73, 1973 Cal. Stat. ch. 785, § 1. (In each of the ensuing statutory references, the current codified version may be somewhat different from the original law.)

a large capital investment, were found to be needful of "unique protection" both during their tenure and upon sale.[35] The legislature formalized its treatment of the mobilehome owner's co-proprietorship by explicitly substituting the term "homeowner" for the word "tenant" in the mobilehome residency law.[36]

The first problem to which the legislature attended was the practice of evicting homeowners to install someone who had bought a mobilehome from the park owner. In 1969 legislation imposed notice requirements on eviction [37] and two years later prohibited eviction for the purpose of making a space available for a homeowner who purchased the home from the owner of the park.[38]

Although they lost the power to evict in order to install their own buyer, park owners could achieve the same economic benefits by imposing charges on mobilehome sellers and their buyers.[39] In 1972 the State blocked this stratagem by prohibiting entry charges on new homeowners and transfer charges as a condition of sale by incumbent homeowners.[40] A year later the law extended the protections against eviction by prohibiting termination of the tenancy of incumbent homeowners except for cause.[41] During the same year, the legislature barred park owners from requiring mobilehomes to be removed upon sale, another device by which the park owner could have devalued the home of incumbent homeowners.[42] A legislative staff report explaining the 1973 bill noted:

[35] 1975 Cal. Stat. ch. 146, § 1, now codified at Cal. Civ. Code § 798.55.

[36] California Civil Code §§ 798.8 and 798.9.

[37] 1969 Cal. Stat. ch. 1500, § 1, codified at Cal. Civ. Code § 798.55(b).

[38] 1971 Cal. Stat. ch. 1143, § 1, codified at Cal. Civ. Code § 798.58.

[39] *See supra* notes 29 to 33 and accompanying text.

[40] 1972 Cal. Stat. ch. 1001, § 1, codified at Cal. Civ. Code § 798.72.

[41] 1973 Cal. Stat. ch. 351, § 1(d), codified at Cal. Civ. Code § 798.56.

[42] 1973 Cal. Stat. ch. 785, § 1, codified at Cal. Civ. Code § 798.73.

> A second issue is past abuse of park operators who have exercised almost complete control over the sites and even what dealer would sell the mobilehome to be installed in the park. Because of few parks in only a few communities, operators [park owners] would require purchase from a specific dealer, and that they have exclusive right to control resale. They charged excessive fees and frequently did little to market the home. Homeowners took a bath on resale.[43]

In 1975 the legislature assured a qualified purchaser the right to take over the pad on which the home was sited. Despite all the laws previously enacted, if the park owners could nonetheless refuse tenancy to all purchasers, they would still be able to compel a sale to themselves or on terms that would make the mobilehome unsalable to anyone else. Without protection against rejection of purchasers, park owners could circumvent all the State laws enacted to protect the homeowner's investment in his mobilehome.

The law had previously provided that park owners had "the right to require prior approval of a purchaser if the mobilehome will remain located in the mobilehome park or other facility." [44] In the law of June 28, 1975, the legislature added this crucial passage:

> . . . provided, however, that the approval of a purchaser cannot be withheld if the purchaser as a prospective tenant has the financial ability to pay the rent and charges of the park. . . .[45]

With this provision, the State recognized definitively the property right of an incumbent homeowner to sell his home with security of tenure in its location. Implicit in the State's action is its refusal to elevate the economic

[43] Urban Development & Housing Committee, *Memo on AB 702*, Wilson (May 15, 1973).

[44] 1973 Cal. Stat. ch. 785, § 1, codified at Cal. Civ. Code § 798.74.

[45] 1975 Cal. Stat. ch. 146, § 3, codified at Cal. Civ. Code § 798.74.

power of park owners to the status of a protected property interest.[46]

California law recognizes the centrality of homeowner commitment to value in those things that determine neighborhood and locational quality, including investment in improvements and upkeep, maintenance of structures, landscaping, participation in neighborhood activities, and duration and stability of ownership. All of these conditions demand involvement by homeowners and they all add to the value of mobilehomes in place. The homeowner has an equity interest in the estate. Indeed, a Los Angeles study found that the investment of the average mobilehome owner in his home is triple the investment of the park owner in the space on which the home resides.[47]

California's determination of property interests was both reasonable and appropriate.

> Property rights serve human values. They are recognized to that end, and are limited by it. *Title to real property cannot include dominion over the destiny of persons the owner permits to come upon the premises.*

State v. Shack, 277 A.2d at 372 (emphasis added).

B. The Escondido Ordinance, Consistent With State Law, Protects the Mobilehome Owner's State-Defined Property Right While Guaranteeing the Park Owner a Reasonable Return on Its Investment.

Although State law does not explicitly impose any limit on the amount of rent the park owner can demand from the new howeowner, a limit to some reasonable amount is necessarily implicit in the 1975 provision requiring park owners to accept a qualified purchaser. The provision would be a nullity if a park owner could approve prospective tenants only on condition that they pay a pro-

[46] California, in recognition of the unequal bargaining power of the mobilehome owner and park owner, prohibits the waiver of its mobilehome owner protection laws. Cal. Civ. Code §§ 798.19, 798.77.

[47] City of Los Angeles Rent Stabilization Division, Community Development Department, *Mobilehome Parks Under Rent Stabilization* (1985) at 11, 33.

hibitively high rent (a rent, for example, that would only be affordable if the price of the mobilehome had dropped to salvage value). Escondido's Ordinance implements the homeowner's state-recognized property right by limiting the required rent to a "just, fair, and reasonable" amount. Escondido Municipal Code § 29-104(g) (*see* Joint Appendix ("J.A.") at 25).

1. *Escondido's Vacancy Control Ordinance Is a Logical Extension of State Law.*

The aim of the Escondido Ordinance's vacancy control provision, as well as the ordinances of numerous other local governments in California and elsewhere,[48] is to protect mobilehome values from decline by limiting the rental prices park owners can exact from new buyers. An unlimited power to drive rents up is an unlimited power to drive mobilehome prices down—until they reach scrap or salvage value, which is virtually nil even for the most expensive homes.[49]

Petitioners' claim that exorbitant rent increases are unlikely because park owners have no incentive to "deter listings and sales" is flatly wrong. (Brief, at 29.) Park owners have *every* incentive to deter sales and listings—to everyone but themselves. That is exactly what they have done; indeed, that is the power they claim. Arguing in their brief before the Court of Appeal, petitioners stated that without rent control, "the landlord could raise the rent to prohibitive levels and as a practical matter

[48] Local governments throughout California heave instituted mobilehome rent control, even where they do not have apartment rent control. These governments repeatedly cite the scarcity of mobilehome pad vacancies, the difficulty and cost of moving a mobilehome, and the ability of park owners to take advantage of this situation as the reason for implementing rent control. *See e.g.*, Chula Vista Municipal Code § 16.16.010; Morgan Hill Municipal Code § 5.36.010; Laguna Beach Municipal Code § 1.12.010; City of Fresno Ordinance No. 87-170; Salinas Municipal Code § 17.1-1. The Escondido Ordinance is similar to many of these other laws. J.A. at 21.

[49] "Mobile Home Parks and Connecticut's Regulatory Scheme," *supra* note 23 at 815 and n.19.

has both the right and the power to compel the removal of the tenant." Appellants' Opening Brief at 1.

The history of California's mobilehome park legislation shows that park owners have used their power over eviction, over access to land, and over future rents, to position themselves as the sole agents for, or buyers of, mobilehomes that are for sale in their parks.[50] Over fifty mobilehome owners in Salinas, California complained that park owners improperly rejected prospective buyers. Several homeowners reported that after they were unable to sell their homes to an outside buyer, the park owner bought the homes at below market value and then sold the homes at a profit.[51]

Unless a seller can guarantee his buyer that the mobilehome will not have to be removed from the premises, that the buyer will be accepted as a park resident, and that the buyer will be protected against prohibitive entry fees, transfer fees, and rents when he moves in, a homeowner has no way to protect his investment in the home. This is true whether or not the law prohibits the sale of the home to the park owner. Even where park owners do not engage in abusive rent practices, large increases in rent decrease the value of the mobilehome, and threaten the equity investment of the homeowner. The prospect of continued, unpredictable rent increases can make a mobilehome unmarketable.[52] Unlike ordinary landlords, park owners need not worry about sluggish sales or vacancies. The mobilehomes remain on the land; no matter how long it takes to sell them, and whether they are occupied or vacant, homeowners must continue to pay rent to the park owners.

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[50] *See supra* notes 29 and 33 and accompanying text.

[51] *Survey of Mobile Homeowners in Salinas*, Legal Services for Seniors, Salinas, California (1990) at 3. *See also* "Judge Hammers Landlord's Attorney for $25K," *Santa Barbara Independent* (April 11, 1991) at 11 (indicating that park owner at one mobilehome park proposed rental increase of 100 percent—from $300 to $600).

[52] *Manufactured Housing for Families*, *supra* note 12 at 14.

Moreover, steady increases in rent above the consumer price index can have significant adverse impacts on current mobilehome owners—especially older homeowners on fixed incomes—regardless of their impact on the value of the home. Cities throughout California have reported large rent increases in recent years.[53] For homeowners living on fixed incomes, rent increases above the consumer price index quickly exceed their financial resources.

The Escondido Ordinance is one important element in the long-standing effort to secure the property right of mobilehome owners in the value of their homes. The Ordinance simply implements State law on a local level by ensuring that park owners cannot circumvent the purpose behind the State law by charging exorbitant rents to prospective tenants. Without this protection, park owners could reject all new homeowners through rent increases.

2. *The Escondido Ordinance Does Not "Unreasonably Impair" the Park Owner's Right to the Use of Its Property.*

In implementing the homeowner's property right, the Escondido Ordinance protects the park owner's right against unreasonable impairment (*PruneYard*, 447 U.S. at 83) by providing for a reasonable return on investment, which is all that the Constitution demands. *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 305, 310 (1989). The Escondido Ordinance makes no *ipse dixit* reversal of a usual and general property rule, *Webb's Fabulous Pharmacies*, 449 U.S. at 164, for it merely im-

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[53] Rents in petitioners' parks increased by 28-30 percent between 1986 and 1988; the consumer price index during that time rose by only 7.5 percent. U.S. Department of Labor, Bureau of Labor Statistics, *Consumer Price Index, San Diego, California* (August 15, 1991) at 1. *See also* Baar, *Mobile Home Ownership in Fremont* (1991) at 11 (in one example rents increased by 354 percent between 1972 and 1991, while the consumer price index during that same time rose by only 242 percent); *Survey of Mobile Homeowners in Salinas*, *supra* note 51 at 1 (indicating that average annual rents increased at two to three times the consumer price index). Generally, rental housing prices increase at only 65 percent of the consumer price index. *Id.*

poses rent control, a permitted limitation on landowners since 1921. *Block v. Hirsch*, 256 U.S. 135 (1921); *Pennell v. City of San Jose*, 485 U.S. 1 (1988).

Nor can park owners claim the ordinance deprives them of a reasonable investment-backed expectation. *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979). Any of the devices by which park owners could drive mobilehome prices down to salvage value, such as the power to evict, remove, deny qualified successors, or charge excessive rents, are not constitutionally protected property interests. Petitioners' economic interest is derived from two forms of monopoly power: one resulting from the scarcity of land available for mobilehome park development and the other gained as a result of the homeowner's sunk investment in his home. "No one has a legitimate claim of entitlement to monopoly profits." *Chicago, Milwaukee, St. Paul & Pacific R. Co. v. United States*, 799 F.2d 317, 327 (7th Cir. 1986) (Easterbrook, J.). The State has determined that this power to exploit does not represent a property interest of the park owner.

III. CALIFORNIA'S LEGISLATIVE RESPONSE TO THE DEFINITIONAL PROBLEM POSED BY MOBILEHOME OWNERSHIP IS ENTIRELY CONSISTENT WITH THE RESPONSE OF OTHER JURISDICTIONS TO SITUATIONS OF DIVIDED OWNERSHIPS.

When new forms of divided ownership have appeared, the states have had to define property rights appropriate to the circumstances. Condominium ownership is the most familiar example. It raises an analogous problem to that of the mobilehome owner and park owner and it has generated similar rules. While a condominium association is not a landlord seeking rent, it can and does have interests distinct from those of a single homeowner, and it also has economic power because of the sunk investment of the homeowner. When a condominum owner wishes to sell his unit and is subject to the approval of the condominium board, courts hold that the necessary approval may not be withheld except upon reasonable grounds, such as

the financial capacity of the buyer.[54] Where the board is allowed to exercise a right of refusal, it is obliged to provide a buyer at an equally favorable price. *Chianese v. Culley*, 397 F. Supp. 1344 (S.D.Fl. 1975). The board cannot use its powers of refusal to devalue, or capture for itself, the value of the condominium unit.

Another analogous situation arose in Hawaii, where large landowners refused to sell land and required that homes be sited on their land under lease. The state enacted a land condemnation plan whereby the underlying land was acquired from landowners at fair market value and resold to homeowners. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 234 n.2 (1984). The novel question for the state then was what part of the total, in a split estate, belonged to the landowner, and what part to the homeowner. *Id.* at 244. Under Hawaii law, the landowner is not entitled to everything that its power position would have allowed it to capture in a scarce marketplace; instead, Hawaii attributed to the homeowner the value of his property investment by way of his improvements and enhancements of both the lot and the neighborhood. Hawaii Rev. Stat. Ann. Title 28 § 516-1 (Supp. 1989) (defining "owner's basis").

Both the United States and England faced a similar problem that grew out of landowner practices in the Nineteenth Century. In England, many landowners refused to sell their land, and homeowners were obliged to build their homes on another's land under 99 year leases. As those leases reached termination in the Twentieth Century, homeowners were threatened with having to "remove" their buildings, which effectively meant selling to the landowners at scrap value. Parliament responded with legislation permitting the homeowners either a 50-year lease extension, or a right to purchase the underlying land, at governmentally-approved prices, rather than

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[54] *See, e.g., Aquarian Foundation, Inc. v. Sholom House, Inc.*, 448 So.2d 1166 (Fla. Ct. App. 1984); *Laguna Royale Owners Association v. Darger*, 119 Cal. App. 3d 670 (1981).

the price the landowner could have exacted as a result of the homeowner's sunk investment. The purpose, and result, of the legislation was to protect the homeowner's investment value against landlord economic power.[55]

In some American states, statutes granted lessees with similar long term leases a non-waivable right to buy the underlying property in fee. The statute set a reasonable price for the property, although it was a lower price than the landlord could exact as a result of his economic power over the homeowner. The American law, recognizing the homeowner's right to realize the investment value of his home in place, set a maximum price the landlord could demand. *Stewart v. Gorter*, 16 A. 644 (Md. 1889).[56]

As the preceding examples show, jurisdictions have followed various approaches in determining the incidents belonging to each of the co-proprietors. In each case, the jurisdiction has diminished the economic power of the unregulated landowner in favor of the homeowner, while guaranteeing it a just, fair, and reasonable return on investment. California and Escondido have done no more through their recognition of the property rights of the mobilehome owner and the park owner.[57]

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[55] *Leasehold Reform in England and Wales*, Presented to Parliament by the Minister of Land and Natural Resources by Command of Her Majesty (H.M.S.O., Feb., 1966) at 4-5, describing the proposal that became the Leasehold Reform Act of 1967, section 1(1). *Halsbury's Laws of England*, Vol. 27 ¶ 1001, 4th Ed. (Butterworths 1981 & Supp. 1990).

[56] *See also* 16 U.S.C. § 20e (West 1991) (United States must compensate companies operating businesses in National Parks for loss of their structures if the government terminates their concession contract).

[57] California's approach to the split ownership situation is similar to the approach taken throughout the United States. Many states require that park owners give homeowners renewable leases. Mass. Gen. Laws Ann. ch. 140 § 32J (West 1979 & Supp. 1991); Vt. Stat. Ann. tit. 10, § 6237 (Equity 1984 & Supp. 1991); Pa. Stat. Ann. tit. 68 § 398.3 (West 1984 & Supp. 1991). Three other states permit a selling homeowner to transfer his lease to the purchasing homeowner and prohibit the park owner from rejecting the purchaser except for an inability to pay rent, refusal to follow park rules, or evidence of illegal use of the mobilehome. Mass. Gen. Laws Ann. ch. 140 § 32M (West 1979); Vt. Stat. Ann. tit. 10, § 6240 (Equity 1984 & Supp. 1991); R.I. Gen. Laws § 31-44-4(f) (Michie 1982 & Supp. 1991).

IV. ESCONDIDO'S VACANCY CONTROL ORDINANCE SATISFIES THE CONSTITUTIONAL REQUIREMENTS DEMANDED OF REGULATORY ENACTMENTS.

Although this is a definition of property case, the Escandido Ordinance plainly survives scrutiny under this Court's regulatory taking standards. There is a legitimate interest in protecting homeowner values; the state may define homeowner values to include locational value, as well as investment and improvement value over and above salvage value. Moreover, homeowner values are and have been diminished by the behavior of park owners; there is thus a nexus between the harm caused by park owners and the remedy that both the state legislation and local ordinance have fashioned.

The remedy that the State and City of Escondido have chosen, affording homeowners locational value by means of statutorily-created rights of tenure and transfer in location, and by limiting charges that could thwart realization of those rights, is tightly fitted to the harm.[58] Indeed, the remedy achieves precisely the purpose of mobilehome policy; the intended beneficiaries of the law are in fact benefitted—both incumbent and future owners—in the form of stabilized home values and opportunities to accrue enhancement value upon sale. Insofar as certain beneficiaries (incumbent homeowners) realize an additional benefit, that is a necessary and inevitable result of new laws and legal interpretations, whether they result from legislation or from judicial decision.

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[58] The alternative suggested by petitioners is no alternative at all. (Brief, at 29.) They simply propose the repeal of vacancy control laws, which would defeat the precise and legitimate purpose that the Escondido Ordinance seeks to achieve.

A. Contrary to Petitioners' Claim, Escondido's Vacancy Control Ordinance Confers Substantial Advantages Upon Successor Homeowners.

Petitioners argue that successor mobilehome owners obtain no benefit from the law, suggesting that all the benefit is captured and carried away by the incumbent homeowner-seller. (Brief, at 23-24.) This contention is erroneous.

Even if the sales price of mobilehomes were to rise immediately after the imposition of vacancy control, there would be substantial benefits to each new generation of buyers.[59] Where new owners improve and maintain their mobilehomes, or enhance the quality of the neighborhood, they will be able to realize the increased value of their home and its environs when they sell. If new residents could not assure their buyers, in turn, the right to tenancy at a controlled price, the park owner would be able to capture such added value over and above the value of the home when the homeowner bought it. The law thus assures homeowners the ability to realize the benefits of what they put into the property when they decide to sell.

The law also frees purchasing homeowners from instability arising from strategic behavior on the part of the park owner. Park owners sometimes underprice the rental amount for a pad for their own reasons (for example, they may seek to ward off additional government regulation of their industry).[60] Insofar as home prices and rentals are complementary, home prices will rise during such a period. One who buys during a period of rental underpricing will pay a higher home price. Later, when it comes time to sell, park owners may be charging maximum rents and home prices will then fall. The homeowner caught in such circumstances will have bought high, but have to sell low. While home prices always vary to some extent with market conditions, most homeowners are not forced into a speculative market, where— in order to invest wisely in their homes—they must be skillful guessers about landlord pricing and turnover strategies. In the absence of vacancy control, park owners have an incentive to promote turnover in tenancies, which in turn promotes instability. Vacancy control laws reduce speculative risk and import stability into the mobilehome market.

[59] Some buyers will find that mobilehome prices do not rise automatically to absorb the economic value of vacancy control. Where mobilehome sales are sluggish, eager sellers may keep prices down to attract buyers quickly. Nor are people always rational maximizers. In such cases, buyers will benefit from controlled rental prices.

[60] Hirsch and Hirsch, *supra* note 22 at 445.

B. The So-Called Windfall to Incumbent Homeowners Is a Common Benefit Enjoyed by All Incumbents When Government Creates or Redefines Property Rights.

The fact that homeowners in place at the time of the law's enactment receive a special benefit is inevitable and constitutionally irrelevant. (Brief, at 25-28.) When a law changes or creates new rights, incumbent owners obtain an additional benefit beyond what their successors get, simply because they are in place at the time of the law's enactment.

For example, owners of property along the California coast who bought their land at a cost reflecting the prospect of a beach access easement received a windfall because they were in place when this Court invalidated a similar easement in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). Their property values would rise to reflect the economic value of the new legal rule. When they sell their properties, they will reap the capitalized value of that change.

As property rules inevitably change, or as new technology results in new property interests, incumbent owners who are in the right place at the right time reap a special gain from the change. *See e.g., Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co.*, 429 U.S. 363 (1977) (overruling the property rule of *Bonelli Cattle Co. v. Arizona*, 414 U.S. 313 (1973)).

V. THE ESCONDIDO VACANCY CONTROL ORDINANCE DOES NOT CONSTITUTE A PHYSICAL INVASION TAKING UNDER THE *LORETTO* DOCTRINE.

A. The Escondido Ordinance Does No More To Transfer a Possessory Interest in Property Than Do Any of the State Provisions.

The claim that the Escondido Ordinance in conjunction with the California Mobilehome Residency Law is a taking of a "possessory interest in the realty" of the park owner sweeps extraordinarily broadly. (Brief, at 14.) Each of the State law protections, enacted over twenty years, creates in the mobilehome owner a present possessory interest in the realty of the park owner, an interest the homeowner did not have by lease or contract. Each provision empowers the homeowner to exercise those rights at a price below that at which the park owner would have voluntarily granted such rights. Unless it is assumed that park owners could have thwarted all those laws by charging some exorbitant rent as a condition of their exercise, the Escondido Ordinance no more constitutes a taking within the meaning of *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), than do any of the State laws. All the Escondido Ordinance adds is the right of a purchasing homeowner to pay the same rent for the space as the seller, while still allowing a reasonable return to the park owner.

It is true that not all the State laws relate to the sale of the mobilehome on-site. Some rights under the State law, such as the protection against eviction, are vested in the incumbent resident. But there is no rational basis for distinguishing, as a matter of constitutional taking doctrine, between a right to sell the mobilehome to another and the right to have one's own tenancy extended. In each case, the purpose of the State law is to protect the investment value of the mobilehome against the efforts of the park owner to drive down the price of the home to

salvage value. That concern is identical whether the owner remains, subleases, or sells.

The right to occupy land permanently is indeed something that California law gives to mobilehome owners and that must be given if mobilehome value is to be protected at all. For where there is nowhere to move such homes, an order to move is effectively an order to turn the home over to the park owner at its salvage value. The right to occupy land at less than the rent the park owner chooses to charge is equally necessary to protect against the park owner's capacity either to appropriate the home for himself or to charge rents that render the mobilehome worthless. The right granted the mobilehome owner to "market" the right of occupancy is simply a grant to the homeowner of the right to alienate his property.

Insofar as these rights are, in part at least, rights that ordinary tenants do not have, the answer is that mobilehome owners are not ordinary tenants. They are coproprietors. To characterize them merely as tenants is not only to slight the authority of the State to give definition to property rights under novel circumstances, it is to give no constitutional weight to the needs of a homeowner whose home is sited on the land of another as a matter of economic necessity.

B. The Crucial Element in *Loretto* Was the Absence of a Voluntary Opening of the Property to Possessory Use by Others.

Nothing in *Loretto* or any other physical invasion case compels or even suggests the result urged on this Court by petitioners and their supporters. The crucial distinction between this case and *Loretto* is the presence here of a voluntary act on the part of the park owner opening his property to the possession of others. That act may come in the form of property that has been opened to the general public, *PruneYard Shopping Center v. Robins*, 447 U.S. 74, or property that is occupied under a contractual

relationship between the landowner and the persons on whose behalf the challenged law has been invoked. *FCC v. Florida Power Corp.*, 480 U.S. 245 (1987).

Where there is no such voluntary act, a landowner is entitled to be left to the exclusive possession, peace and quiet, and privacy that is a central element of a property right.[61] *United States v. Causby*, 328 U.S. 256; *Nollan v. California Coastal Commission*, 483 U.S. 825. Where a landowner has opened private land only to those who pay (who have a contractual relationship with him), the state cannot compel him to convert it to a public facility, opening it also to those who do not pay. *Kaiser Aetna v. United States*, 444 U.S. 164. *Fred F. French Inv. Co. v. City of New York*, 39 N.Y.2d 587, 350 N.E.2d 381 (1976). But a property owner who has entered into a contractual relationship with another to possess his land cannot claim the right to dictate the terms of that relationship free of all government regulation, and subject only to the bargained-upon terms that unconstrained bargaining would produce between the parties. Such a result would constitute a throwback to the discredited doctrine of freedom of contract articulated in *Coppage v. Kansas*, 236 U.S. 1 (1915) and *Adkins v. Children's Hospital*, 267 U.S. 525 (1923).

Any extension of *Loretto* to invalidate regulation of contractual possessory relationships would make all sorts of conventional regulation constitutionally suspect as takings. Even if a rule were limited to some notion of a "marketable" possessory right it would be very far-reaching. Laws recognizing rights to sublease or to assign

[61] Unlike *Loretto*, where the owner had not consented to the invasion of his property by the Teleprompter cable, here the only physical objects on the park owner's property are mobilehomes to which the park owner has no objection. Indeed it is in consequence of such "invasions" that he makes his living.

a lease would be vulnerable as takings, since such rights compel the landowner to accept an imposed new tenant at a set price. In fact, unreasonable withholding of permission to sublease can be an illegal restraint on alienation.[62] This is the sort of prospect the Court recognized when in *F.C.C. v. Florida Power Corp.*, 480 U.S. at 252, it drew a distinction between voluntarily initiated "invitations" and those that are imposed by government. "[I]t is the invitation . . . that makes the difference."

CONCLUSION

There are no factual disputes in this case which merit a trial. Amici do not disagree with the economic theory that motivates petitioners' action: mobilehome prices and rents are complementary. The fact that mobilehome prices increase when rents are controlled, however, does not deprive park owners of any constitutionally protected interest. Moreover, it is precisely this relationship that makes controlling rents a rational response to the need to protect mobilehome owners' equity investment in their homes.

Because most mobilehomes in reality must be occupied on the land of another, the formulaic rule urged by the petitioners—no sale of the right to occupy the land of another—would deny mobilehome owners any claim to their property rights. Neither *Loretto* nor any other case decided by this Court calls for such an outcome. Even accepting every allegation in petitioners' complaint as true, the Escondido Ordinance does not violate any of petitioners' constitutional rights.

For all of the reasons stated herein, amici respectfully request that this Court affirm the decision of the California Court of Appeal.

[62] New York Real Prop. Law, § 226-b (West 1989 & Supp. 1991); Restatement (Second) of Property, § 15.2(2) (1977 & Supp. 1991).

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